



## INTERIOR BOARD OF INDIAN APPEALS

Yomba Tribal Council, Yomba Shoshone Tribe v. Acting Phoenix Area Director,  
Bureau of Indian Affairs

18 IBIA 243 (04/16/1990)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

YOMBA TRIBAL COUNCIL, YOMBA SHOSHONE TRIBE

v.

ACTING PHOENIX AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-83-A

Decided April 16, 1990

Appeal from a denial of a Core Management grant application.

Affirmed.

1. Board of Indian Appeals: Jurisdiction--Indians: Financial Matters: Financial Assistance

Decisions concerning whether a tribe's application for a Core Management grant should be funded are committed to the discretion of the Bureau of Indian Affairs. In reviewing such decisions, it is not the function of the Board of Indian Appeals to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

APPEARANCES: Timothy Meehan, Esq., Carson City, Nevada, for appellant; Wayne C. Nordwall, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for appellee.

## OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Yomba Tribal Council, Yomba Shoshone Tribe, seeks review of a June 15, 1989, decision of the Acting Phoenix Area Director, Bureau of Indian Affairs (Area Director; BIA), denying its application for a FY 1989 Core Management grant. For the reasons discussed below, the Board affirms the Area Director's decision.

### Background

The Phoenix Area Office was allocated \$385,000 in funding for the FY 1989 Core Management grant program. Twenty-four tribes submitted FY 1989 grant applications to the Area Office, requesting a total of \$1,311,623.

Appellant had been awarded Core Management grants in FY 1985, FY 1987, and FY 1988. It applied for a new grant under the FY 1989 program. Appellant's application received a score of 70 after being reviewed at the agency and area office levels. This score placed it thirteenth among the 24 applicants. Only 12 tribes were funded.

By letter dated June 15, 1989, the Area Director informed appellant that its FY 1989 application had been denied. The Area Director stated in part:

You are presently administering a Core Management grant that will expire on June 30, 1989. This grant contains basically the same grant objectives as those being proposed. There is no information that provides a clear distinction on what the differences are or will be.

While the Phoenix Area Office Core Management guidelines and the regulations in 25 CFR [Part] 278 allow for continuation of approval for multi-year grant programs, we must ensure there is evidence that progress is being made. If you will refer to the Core Management Grant guidelines, you will find that continuation of multi-year grant programs [is] contingent upon (1) a grantee's satisfactory performance (objectives are being completed) and (2) the availability of funds.

\* \* \* \* \*

Your program is not an approved multi-year program and therefore, did not meet the priority one ranking. While it met the priority two ranking, which would have enabled the application to be funded, the problems identified above plus a number of other eligible priority one applications prohibited the approval of your application. Priority was also given to first time applicants showing immediate need.

The Board received appellant's notice of appeal from this denial on July 31, 1989. Both appellant and the Area Director filed briefs on appeal.

#### Discussion and Conclusions

Appellant argues that (1) the Area Director breached the Federal Government's trust responsibility to Indians in distributing the Core Management funds; (2) he failed to comply with the time requirement in 25 CFR 278.25(b)(2); (3) he was arbitrary and capricious; and (4) his decision is not supported by substantial evidence.

The Area Director argues that the Board lacks jurisdiction over this appeal because his decision was based on the exercise of discretionary authority, but that if the Board finds it does have jurisdiction, it must affirm the Area Director's decision because appellant has not shown that the competition for Core Management grants was unfair.

[1] In Lower Elwha Tribe v. Portland Area Director, 18 IBIA 50, 51 (1989), the Board discussed its role in reviewing BIA decisions concerning whether a particular Core Management grant application should be funded. These decisions, the Board held, are committed to the discretion of BIA.

The Board stated: "In reviewing such decisions it is not the Board's function to substitute its judgment for that of BIA. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion." <sup>1/</sup> The Board has also held that a discretionary decision by a BIA official should be reasonable. E.g., Absentee Shawnee Tribe v. Anadarko Area Director, 18 IBIA 156 (1990). The Board finds that it has jurisdiction over this appeal, limited as described in Lower Elwha Tribe and Absentee Shawnee Tribe.

Appellant argues that BIA has a general fiduciary duty to distribute the limited Core Management funds in an equitable manner. Citing Morton v. Ruiz, 415 U.S. 199 (1974), and Rincon Band of Mission Indians v. Harris, 618 F.2d 569, 572 (9th Cir. 1980), appellant contends that BIA is required to develop criteria for distribution of funds to Indians that are rationally aimed at an equitable distribution of the funds and that, by failing to develop standards and guidance for distribution of the funds, the Area Director breached his trust duty.

25 CFR 278.22 contains the basic eligibility criteria for Core Management grants. In addition, the Area Director developed guidelines, including funding priorities, for distribution of the funds available for the FY 1989 program in the Phoenix Area. He sent these guidelines by memorandum dated December 21, 1988, to agencies under his jurisdiction, requesting that tribes be given copies. Appellant admits that it received a copy. The Board finds that the Area Director committed no breach of trust in this regard. <sup>2/</sup>

Appellant next contends that the Area Director violated the time requirements in 25 CFR 278.25(b)(2) by failing to act on its application

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<sup>1/</sup> The Board also noted that the amount of money available for the Core Management program is limited by the amount Congress appropriates for the program. The Board stated: "Because the funds available for the program are less than the total amount requested by the tribes eligible for the program, some form of competitive allocation of the available funds is necessitated. The system established by BIA, in which each application is reviewed and ranked and funds are awarded based upon positions within that ranking, is a reasonable and objective method of allocating those funds." 18 IBIA at 52. See also Caddo Indian Tribe v. Acting Anadarko Area Director, 18 IBIA 63 (1989).

<sup>2/</sup> Appellant also contends that the Area Director breached his trust duty by failing to inform the Western Nevada Agency, BIA, of the limited amount of funds available for distribution. The Area Director's Dec. 21, 1988, memorandum did not mention the amount of funding the Area Office had received for the Core Management program. It is possible that the Area Director otherwise informed the agency of the amount available. In any event, the Board finds that, even if the Area Director did not inform the agency of the amount, this omission did not constitute a breach of trust.

within 15 working days of completion of the review process. <sup>3/</sup> Appellant contends that the review process was completed on April 21, 1989, the date on which the second of two Area Office staff reviewers signed a rating form; that the Area Director's June 15, 1989, decision was therefore nearly a month late; and that appellant was prejudiced by the delay because, during that time period, other grant applications were likely to have been considered and awarded, thereby exhausting funds.

The Area Director contends that the review process did not end on April 21 because the Area Director was himself a part of the review process, retaining the authority to review comments of his staff and to conduct an independent review of grant applications. Further, the Area Director argues, appellant was not harmed even if the 15-day deadline was not met, because all applications were reviewed and ranked.

Given the competitive nature of the program, the Area Director could not have treated all applicants fairly had he attempted to issue decisions on some applications prior to completing a review of all of them. The Board finds that appellant was not prejudiced vis-a-vis other applicants, even if the Area Director's decision was delayed, because all applications were considered. <sup>4/</sup>

Appellant next argues that the Area Director acted in an arbitrary and capricious manner by establishing funding priorities in his program guidelines, because 25 CFR 278.22 does not authorize him to attach greater significance to some criteria than to others. It also argues that he was arbitrary and capricious in failing to publish the guidelines and in failing to produce written standards or instructions for the evaluation of grant applications.

In Washoe Tribe v. Phoenix Area Director, 18 IBIA 192 (1990), the Board addressed a contention that the Area Director violated the regulations because he applied a priority for first-time applicants with immediate need which was not set forth in his program guidelines. The Board stated:

In a program such as the Core Management program, in which the amounts sought greatly exceed the funds appropriated, BIA must exercise discretion in allocating the limited resources. Until it knows the identity of applicants and the level of funds sought versus the appropriations available, it cannot make a reasoned

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<sup>3/</sup> 25 CFR 278.25(b)(2) provides: "Upon completion of the application review process the Area Director shall initiate, within 15 working days, one of the following actions: \* \* \*."

<sup>4/</sup> Although appellant contends that there is nothing in the record to show that all applications were reviewed, this contention is refuted by the Area Self-Determination Specialist's Sept. 29, 1989, final report for the FY 1989 core management program, which lists the scores and rankings of all 24 applicants.

determination as to how those limited resources can best be allocated. Appellee's decision to give priority to first-time applicants with demonstrated immediate need is a reasonable exercise of his discretion.

18 IBIA at 194. In this case, appellant objects to the priorities contained in the Area Director's program guidelines, rather than to a later-developed priority. For reasons analogous to those discussed in Washoe Tribe, however, the Board finds that it was a reasonable exercise of his discretion for the Area Director to develop funding priorities once he became aware of the funding that would be available for the program in the Phoenix Area. 5/

Appellant also argues that the failure of the Area Director to publish his program guidelines was arbitrary and capricious. It concedes, however, that it received actual and timely notice of the guidelines (Appellant's Opening Brief at 8). The Board concludes that the Area Director's method of distributing the guidelines to potential applicants was reasonable.

Appellant further argues that the Area Director was arbitrary and capricious in not having developed written standards for the reviewers to use in rating the applications. No written instructions were given to reviewers. 6/ The rating form used by the Area Office allowed the award of points within a certain range for each of six categories. The Board finds that standards were, to some extent, incorporated in the rating form. Clearly, the awarding of points required the exercise of judgment. While the use of more detailed standards might have been preferable, the Board cannot conclude that the Area Office's method of ranking the applicants was arbitrary or capricious.

Finally, appellant argues that the Area Director's decision is not supported by substantial evidence. It contends that, contrary to the Area Director's conclusion, appellant's grant objectives for FY 1989 are different from its 1988 objectives because it has added four new objectives. It is true that appellant's 1989 application contains four new objectives. However, the remaining objectives are very similar to its 1988 objectives. The Board cannot conclude that the Area Director was unreasonable in finding that appellant's FY 1989 objectives were basically the same as its FY 1988 objectives.

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5/ The Area Office was apparently advised of the amount of funding by a Fund Distribution Document received on Oct. 24, 1988.

6/ The Area Director stated in a Nov. 3, 1989, letter to appellant's attorney:

"[N]o written standards or instructions were provided the reviewers for determining how many points to award for each of the categories listed on [the rating form]. The award of points was discretionary and based on the reviewers' knowledge of a particular tribe's needs, and on the quality of the submission from that tribe."

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Phoenix Area Director's June 15, 1989, decision is affirmed.

//original signed

Anita Vogt  
Administrative Judge

I concur:

//original signed

Kathryn A. Lynn  
Chief Administrative Judge